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The Speaker Election in the 118th Congress: A Procedural Review

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Abstract: The election of a new Speaker of the House of Representatives for the 118th Congress in January 2023 stretched on for several days and 15 roll call votes—the longest contested Speaker election in modern congressional history. This article proves a two-part analysis of this unusual event. First, it reviews the procedural practice of the House for its organization at the beginning of each Congress. Second, it analyzes the operational and strategic conduct of the election, with an eye not only on the individual Members-elect and party factions operating within it, but also on the role of the non-partisan House officers managing the proceedings.

Keywords: U.S. Congress, U.S. House of Representatives, Speaker of the House, Kevin McCarthy, Republican party

1 Introduction

The election of the Speaker of the House of Representatives for the 118th Congress concluded at 12:38 am on Saturday, January 7, 2023, when Clerk Cheryl Johnson announced that Kevin McCarthy, Republican Member-elect from the 20th district of California, had received 216 votes, a majority of the votes cast by Members-elect voting by surname, a quorum being present.¹

This voted ended, procedurally, the Speakership election that had begun 4 days earlier, on January 3 at noon, when pursuant to the 20th amendment of the Constitution, federal law, and the Rules of the House, the Clerk called to order the 118th House of Representatives and presided over the chamber under general parliamentary law as it began to organize itself.²

1 Roll Call Vote #20, United States House of Representatives, 118th Congress.

2 Constitution, 20th Amendment; The Clerk presides under House Rule II, cl. 2 and 2 U.S.C. §26. See §641 in *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States One Hundred Seventeenth Congress*, prepared by Thomas J. Wickham, H.Doc. 116–177, 115th Cong., 2nd sess. (Washington, DC: GPO, 2021) (*Hereinafter, House Rules and Manual*.) See also Ch 1 §3 in Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *Precedents of the United States House of*

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Over the course of the four days of the Speakership contest, the House took 15 *viva voce* votes for the election of the Speaker,³ with nine different candidates receiving at least one vote on one ballot,⁴ but no candidate receiving sufficient support to secure election until Member-elect McCarthy prevailed on the 15th ballot.

McCarthy's election as Speaker was procedurally secured when a coalition of 20 Republican Members-elect, who had opposed him on most ballots, gradually ended their opposition on ballot #12 through #15 during the day on Friday, January 6, in response to securing various concessions from McCarthy on formal House rules, committee assignments, the Republican policy agenda, and informal Speaker and conference practices.⁵

This formal chamber action during the first week in January followed an eight-week period during which Member-elect McCarthy sought unsuccessfully to politically secure the necessary support to win the speakership on the first ballot. After Republicans won a narrow majority of House seats in the congressional elections held on November 8, 2022, McCarthy was nominated by the Republican conference on November 15 by a vote of 188-31 in a secret-ballot election.⁶

But needing the support of virtually his entire 222-member conference, McCarthy was unable to successfully broker a deal prior to the start of the 118th Congress. This led to the first floor contest of the Speakership in 100 years, the second since the Civil War, and the 15th overall in the history of the House.

This article offers a review of the Speakership election in the 118th Congress and its politics, through the lens of House procedure. As the first contest for the Speakership in the lifetime of virtually all Americans, the conduct of the proceedings on the House floor was unfamiliar territory, both for the House officers managing the deliberations and for the Members-elect strategically operating under them.

Numerous features of House practice—from the electronic voting system to the existence of C-SPAN and other electronic media—simply did not exist the last time there was a contested election. Others, such as the role of the Clerk and the extended

Representatives H.Doc. 115-62, 115th Cong., 2nd sess. (Washington, DC: GPO, 2015) (Hereinafter, *Precedents*.) See also Ch. 5, §4 in Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *House Practice, A Guide to the Rules, Precedents, and Procedures of the House of Representatives* (Washington, DC: GPO, 2017). (Hereinafter, *House Practice*.)

³ Roll Call Votes #2, #3, #4, #5, #6, #7, #9, #10, #11, #12, #13, #15, #16, #18, and #20, United States House of Representatives, 118th Congress.

⁴ The nine candidates were Members-elect McCarthy (CA-20), Jeffries (NY-8), Donalds (FL-19), Jordan (OH-4), Biggs (AZ-5), Banks (IN-3), Hern (OK-1), and former president Donald Trump.

⁵ Ariana Coghill, "Here Are the Concessions Kevin McCarthy Had to Make to Become House Speaker," *Mother Jones*, January 7, 2023.

⁶ Lindsey McPherson, "McCarthy Backed for Speaker, but has Work to do Before January," *Roll Call*, November 15, 2022.

operation of the House under General Parliamentary Law, had lengthy precedents from the 19th century, but had gone virtually untested in—or even contemplated—in the modern political environment.

Specifically, this article will do two things. First, it will review the procedural practice of the House for its organization at the beginning of each Congress. Second, it will offer an analysis of the operational and strategic conduct of the election, with an eye not only on the individual Members-elect and party factions operating within it, but also on the role of the non-partisan House officers managing the proceedings.

2 Organizing the House and Electing a Speaker

The Constitution provides a few rules of procedure for the House—including a majority quorum requirement,⁷ a requirement to keep a journal,⁸ and a requirement to record the yeas and nays upon demand of one-fifth of those present⁹—but otherwise does not govern legislative procedures. Instead, it authorizes both chambers to make its own rules of procedure.¹⁰

Two natural consequences flow from this arrangement. First, a majority in the House has wide latitude to alter its procedures at any time, even to reverse long-standing precedent or practice. The procedural rules of the House are compiled in the *Rules of the House of Representatives* (the “House Rules”), which are readopted at the beginning of each Congress,¹¹ and are routinely altered both at the outset of a new Congress¹² and over the course of any individual Congress.¹³ These Rules, along with the large body of associated precedents, practices, and norms, govern legislative procedure in the House.

Second, and more important to the discussion here, *the House Rules are not in effect during the election of the Speaker*. During the period of time between the expiration of the previous Congress¹⁴ and the adoption of the House Rules for the

7 Constitution, Art I, § 5, Cl 1.

8 Constitution, Art I, § 5, Cl. 3.

9 Constitution, Art I, §5, Cl. 3.

10 Constitution, Art I, § 5, Cl. 2.

11 *House Practice*, Ch. 5 §6.

12 In the 118th Congress, the House readopted the rules of the 117th, with changes, on 1/9/23 in H. Res.5.

13 Most commonly, this is done through the adoption of a special order of business as reported by the Committee on Rules.

14 Under the 20th amendment to the Constitution, the terms of the Members of Congress begin and end at noon on January 3rd of the odd-numbered years. In addition, the first assembly of the new Congress takes place at noon on January 3rd, unless Congress by law appoints a different day.

new Congress—during which (1) the House is called to order; (2) the prayer and pledge are conducted; (3) the Speaker is elected; (4) the Speaker is sworn in; (5) the Members-elect are sworn in; and (6) the Rules of the House are adopted—procedure in the House is governed by the Constitution and, by precedent and past practice, the General Parliamentary Law.

2.1 General Parliamentary Law

At the outset of a Congress, the House is only governed formally by the Constitution. Even provisions of statutory rulemaking passed by previous Congresses—such as the Budget Act¹⁵—do not control the proceedings of the House, under the general principle that a prior House cannot bind a future House procedurally.¹⁶

As a legislative body seeking to organize itself, however, the House needs *some* procedures to guide the deliberations in adopting the standing rules for the chamber. By long-standing precedent and practice, the House operates under principles known as General Parliamentary Law.¹⁷

General parliamentary laws can generically be thought of as the rules and practices that are common to all legislative bodies in the Anglo-American tradition by long-standing custom. It is not written but built upon practice and precedent. Thus, it includes such provisions as the requirement to be recognized by the chair; basic rules of decorum; the motions to adjourn, postpone, and amend; and other legislative procedures vital to the conduct of group deliberation, such as the right to make points of order.¹⁸

In the House, general parliamentary law is understood to be founded on Jefferson's Manual as modified by the practices of American legislative assemblies, especially of the House of Representatives.¹⁹ Precedent and past practice has held that a variety of motions are available in the House while operating under general parliamentary law, including the motion to amend,²⁰ the motion to postpone,²¹ the motion for the previous question,²² the motion to refer a measure to committee,²³

15 P.L. 93–344; 88 Stat. 297.

16 See *Precedents*, Ch. 5 § 2. See also Ch. 1 § 10 in Lewis Deshler, *Deschler's Precedents of the United States House of Representatives including references to provisions of the Constitution and laws, and to decisions of the courts* (Washington: GPO, 1977) (Hereinafter, *Deschler's Precedents*).

17 *House Practice*, Ch 5 § 7; *House Rules and Manual* § 60; *Precedents*, Ch. 5, § 5.

18 *House Practice*, Ch 5 § 7.

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

the motion to table,²⁴ and the motion to commit (or recommit).²⁵ In addition, the House has recognized general parliamentary law to empower the chair to maintain order in the House galleries and enforce rules of decorum.²⁶

As the House has the constitutional authority to make its own rules of procedure, general parliamentary law in the House has also held the ability of the House to shape procedures for the process of its own organization. Thus, general parliamentary law in the House recognizes the use of unanimous consent to set aside rules otherwise in force, as well as the use of resolutions to proscribe the procedures for the consideration of the election of the Speaker and the adoption of the House Rules. In effect, the House can write a special rule for the creation of its standing rules.²⁷

2.2 Presiding Officer under General Parliamentary Law

Prior to the adoption of the House Rules, the Speaker is the presiding officer under the General Parliamentary Law. Prior to the election of the Speaker, the Clerk from the previous Congress is directed under House Rules²⁸ and statute²⁹ to preside over the organization of the House and the election of the Speaker. In practice, however, the Clerk presides under custom, as neither the House Rules from the previous Congress, nor rulemaking statutes not yet incorporated into the rules by the new House, can bind the new House.³⁰

As presiding officer, the Clerk's role is to manage the organization of the House until a Speaker is elected and becomes the presiding officer. The duties of the Clerk in typical practice as the beginning of a new Congress include: (1) calling the House to order; (2) presiding over the establishing of a quorum, now done by electronic device; (3) announcing the receipt of credentials of Members-elect and the filing of credentials of Delegates-elect and the Resident Commissioner; (4) presiding over the election of the Speaker.³¹

As with a typical presiding officer in a legislative setting, the Clerk has the authority to recognize Members-elect to hold the floor, as well as to make rulings on points of order.³² As with the normal presiding officer in the House, most such rulings

24 Ibid.

25 Ibid.

26 Ibid.

27 Ibid.

28 Rule II, clause 2(a).

29 2 U.S.C. § 26.

30 *Precedents*, Ch. 5 § 2; *Deschler's Precedents*, Ch. 1 § 10.

31 *House Practice*, Ch 5 § 4.

32 *Precedents*, Ch. 1, § 3.

can be appealed by a Member-elect,³³ which will typically be disposed of by a majority vote, either to table, sustain, or overrule the decision of the chair.³⁴

In modern practice, the role of the Clerk is almost completely ceremonial, as the first day of the House is typically a neatly scripted affair. Many Members-elect, particularly freshmen members, will have their children with them on the House floor, and an atmosphere of celebration typically fills the Hall.

The one moment that could produce actual legislative deliberation and require management and rulings from the chair—the election of the Speaker—is almost always pro forma, as the majority party nominee virtually always wins on the first ballot, and few if any procedural questions arise in relation to the election.

2.3 Election of the Speaker

After the establishment of a quorum, a motion to proceed to the election of the Speaker is privileged.³⁵ In modern custom, the Clerk does not even recognize a Member-elect to make such a motion, but instead proceeds directly to the recognition of Members-elect for the purpose of nominations for the Speakership. Such nominations are of the highest privilege and take precedence over resolutions seeking to postpone the election of a Speaker and take up other business under a Speaker Pro Tempore.³⁶

Indeed, the House has *never* conducted substantive business in the absence of a Speaker. Until a Speaker is elected, the House can only be described as unorganized and in the process of electing its Speaker. Several times in American history, the inability to elect a Speaker has led to a significant delay in the organization of the House, most notably in 1855-56, when it took 133 ballots and two months to elect Nathaniel Banks Speaker.

While nominations for Speaker are taken by the Clerk from Members-elect recognized on the floor, there is no requirement that Members-elect vote for a nominated candidate; each Member-elect is free to vote for anyone. Indeed, there are arguably no eligibility requirements for the Speaker; it is a relatively well-known piece of constitutional trivia that the Speaker is not required to be a Member of the House, but the same clause of the constitution arguably relieves the Speaker of age or citizenship requirements of Representatives. While no person who was not a

³³ An appeal is not in order in the House on certain decisions of the chair, including the decision on recognition, the count of a quorum, the existence of objection to a unanimous consent request, and the determination of expiration of a Member's time. See *House practice*, Ch. 3.

³⁴ *Ibid.*

³⁵ *House Rules and Manual*, § 27.

³⁶ *Ibid.*

Member of the House has ever been elected Speaker, votes are routinely cast for people other than Members-elect, including in the Speaker election for the 118th Congress.³⁷

In current practice, the Speaker is elected in a *viva voce* vote, in response to the alphabetical call of the roll of Members-elect by the chair. This has been typical practice of the House since 1839. Prior to 1839, Speakers were elected by ballot. Speakers have also been elected by passage of a resolution; this has typically occurred after a mid-Congress vacancy.³⁸

Any of these forms are acceptable, and Members-elect are free to alter the procedures if a majority agrees to such changes. During the major Speakership deadlocks of the 19th century—the 31st Congress (1849), the 34th Congress (1855-56) and the 36th Congress (1859-60)—attempts were made to alter the procedure for voting, most notably when candidates were put up for the Speakership by resolution, in order to get an up-or-down vote on an individual instead of the open *viva voce* vote that does not restrict who Members-elect can vote for. None of these resolutions was ever adopted, because they were either defeated or tabled.

While the electronic voting system in the House is available for use while operating under general parliamentary law—it is used for the initial quorum call before the election and is used for roll call votes related to the adoption of House Rules³⁹—it is not suitable for the Speakership election. The electronic system only allows for votes of yea, nay, or present. The Speakership election, however, is an open-ended vote by surname. The election of a Speaker by passage of a resolution naming a single candidate, however, could make use of the electronic voting system.

Under current precedent, election of a Speaker requires a “majority of Members-elect, voting by surname, a quorum being present.”⁴⁰ This means that a candidate does *not* need an outright majority of the House (i.e. 218 votes if there are no vacancies among the 435 Members-elect), as Members-elect who do not vote (or who vote “present”) are not counted in the denominator.

For example, if candidate A receives 216 votes, candidate B receives 212, and other candidates get a total of 7 votes, candidate A does not win (216/435). But if

³⁷ Former President Donald Trump got one vote for Speaker on the 7th, 8th and 11th ballots. Former Member Lee Zeldin got one vote on the 1st ballot.

³⁸ Elections by resolution took place for the mid-session vacancies in 1936 and 1940. More recent mid-session vacancies have been filled using the same *viva voce* vote as at the start of a new Congress. Most recently, Speaker Ryan was elected in October 2015 via *viva voce* vote.

³⁹ *Precedents*, Ch. 1 § 3, fn 20. Prior to the 110th Congress, use of the electronic voting system required unanimous consent; since the 110th Congress, its use has been considered part of General Parliamentary Law.

⁴⁰ *House Practice*, Ch. 34 § 3.

candidate A receives 216 votes, candidate B receives 212 votes, and 7 Members-elect do not vote (or vote “present”), candidate A does win (216/428). In effect, for every two non-voters (or “present” voters), the number of votes needed to win is reduced by one.

If all 435 Members-elect vote, a candidate needs 218 votes to be elected Speaker. But if 2 abstain (or vote “present”), then the total number of voters is reduced to 433, and only 217 votes are needed to be elected Speaker. Consequently, a vote that switches from another candidate to candidate A is worth 1 vote for candidate A, and a vote that switches from another candidate to not-voting (or voting “present”) is worth 0.5 votes for candidate A.⁴¹

In general, if no Speaker is elected on the first ballot, the Clerk immediately proceeds to a second ballot, recognizing Members-elect for nominations. Members-elect, however, may seek recognition and, upon obtaining the floor, may operate under the general parliamentary laws. This includes making motions, proposing resolutions, moving to table motions, calling for the yeas and nays, and adjourning.

In the drawn-out Speakership elections of 1849 (63 ballots), 1855-56 (133 ballots), and 1859-60 (44 ballots), Members-elect proposed several procedural maneuvers in attempts to break the deadlock. First, several attempts to alter the rules were made. One proposal was to use something like rank-choice or runoff voting, where a first ballot would be open, but then candidates getting few votes would not be allowed on the second ballot. In one instance a proposal was made (likely in jest) to take the top few candidates and select randomly among them by picking a name out of a hat. None of these proposals were ever accepted; resolutions proposing such changes were either defeated or tabled.⁴²

One procedural change that *was* accepted by the House was plurality voting. In both 1849 and 1855-56, the election was ultimately resolved by the adoption of a resolution that created a plurality winner.⁴³ The resolution provided for three more regular election votes, and if no one was a majority winner, a fourth vote would be

⁴¹ The general formula for votes needed to win is as follows: one more vote than the second highest vote-getter, and then an absolute majority of the total number of remaining Members-elect, with affirmative votes counting as 1 vote, and non-votes (or “present” votes) counting as 0.5 votes. For example, with 435 Members-elect, if candidate B has 212 votes, candidate A would need 213 votes, plus 5 total “votes or non-votes” from the remaining 10 Members-elect. This could be accomplished, for example by getting all 10 to vote present, or by getting 3 to vote for candidate A and 4 to present, or by getting 5 to vote for candidate A.

⁴² A detailed and excellent review of all the extended 19th century Speakership contests can be found in Jeffrey A. Jenkins and Charles Stewart III, *Fighting for the Speakership: The House and the Rise of Party Government* (Princeton: Princeton University Press, 2013).

⁴³ See, for example, *Congressional Globe*, February 3, 1856.

taken and the candidate with the most votes would win. This is how both Speaker Cobb and Speaker Banks secured election.⁴⁴

Until a Speaker is elected, the unfinished business of the House is the election of a Speaker. After each ballot in which no candidate receives the required number of votes, the Clerk will proceed to a subsequent ballot unless a Member-elect seeks recognition and makes an alternative motion. Historically, in multi-ballot Speakership elections, the House has typically taken several votes a day, and then adjourned until the next day. While marathon meetings are possible for a Speakership election, they are unusual, reflecting the diminishing returns of endless ballots, the fatigue of Members-elect, and the usefulness of off-floor negotiations after adjournment.

3 The Speakership Election in the 118th Congress

The Speakership election in the 118th House began at approximately 12:35 pm on Tuesday, January 3 when House Clerk Cheryl L. Johnson announced the completion of the quorum call showing 434 Members-elect,⁴⁵ announced the receipt of election credentials for the delegates and Resident Commissioner,⁴⁶ and notified the House of the vacancy in the 4th district of Virginia.⁴⁷ It ended at 12:38 am on Saturday, January 7, 2023, when the clerk announced that Kevin McCarthy, Republican Member-elect from the 20th district of California, had received a majority of the votes cast and had been elected Speaker.⁴⁸

The election took approximately three and a half calendar days and a total of six legislative days.⁴⁹ On Tuesday, the House took three ballots, none of which resulted in the election of a Speaker.⁵⁰ On each ballot, three names were placed into nomination.

⁴⁴ In each case, the House then passed a resolution declaring them Speaker, which was adopted by a full majority, though then (and now) those resolutions seem superfluous. See, for example, *Congressional Globe*, February 4, 1856.

⁴⁵ Roll Call Vote #1, United States House of Representatives, 118th Congress.

⁴⁶ The House currently has six non-voting delegates—one each from the District of Columbia, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, as well as the Resident Commissioner of Puerto Rico. The non-voting delegates are not eligible to vote for the election of the Speaker, nor do they count toward the total number of Members-elect in the House.

⁴⁷ Member-elect Donald McEachin passed away on November 28, 2022.

⁴⁸ Roll Call Vote #20, United States House of Representatives, 118th Congress.

⁴⁹ A legislative day begins whenever the House is called to order after an adjournment, and thus you can have legislative days that last multiple calendar days, and multiple legislative days on the same calendar day.

⁵⁰ Roll Call Vote #2, Roll Call Vote #3, and Roll Call Vote #4, United States House of Representatives, 118th Congress.

At 5:27 pm, it adjourned until noon Wednesday by voice vote. No Member-elect sought recognition to make any other procedural motions and no other votes were taken.

On Wednesday, the House convened at noon and took three ballots, none of which resulted in the election of a Speaker,⁵¹ and at 4:30 pm adjourned by voice vote until 8:00 pm. On each ballot, three names were placed into nomination. No other procedural actions were made, except a point of order by Member-elect Stefanik that a quorum was not present prior to the first ballot.⁵² At 8:00 pm, Wednesday's second legislative day began. After the prayer, approval of the journal, and pledge of allegiance, Member-elect Cole immediately moved to adjourn until noon on Thursday. The yeas and nays were demanded, and the motion was adopted in a recorded vote.⁵³

On Thursday, the House convened at noon and took five ballots, none of which resulted in the election of a Speaker.⁵⁴ On the first two ballots, three names were placed into nomination, and four names were placed into nomination on the last three. At 5:27 pm, Member-elect Scalise moved that the House adjourn until noon on Friday. The yeas and nays were demanded, and the motion was adopted in a recorded vote.⁵⁵ No other procedural actions were made, except another point of order by Member-elect Stefanik that a quorum was not present prior to the first ballot.

On Friday, the House convened at noon and took two ballots, neither of which resulted in the election of a Speaker.⁵⁶ On the first ballot, four names were placed into nomination, and two names were nominated on the second ballot. At 3:22 pm, Member-elect Scalise moved that the House adjourn until 10 pm. The yeas and nays were demanded, and the motion was adopted in a recorded vote.⁵⁷ No other procedural actions were made, except for another quorum point of order by Member-elect Stefanik. At 10 pm, Friday's second legislative day began. One unsuccessful ballot was taken, with two names placed into nomination.⁵⁸ At 11:15 pm, Member-elect McHenry moved to adjourn to noon on Monday. The yeas and nays were

51 Roll Call Vote #5, Roll Call Vote #6, and Roll Call Vote #7, United States House of Representatives, 118th Congress.

52 The quorum was confirmed by a count of the Clerk, as were subsequent points of order against a quorum.

53 Roll Call Vote #8, United States House of Representatives, 118th.

54 Roll Call Vote #9, Roll Call Vote #10, Roll Call Vote #11, Roll Call Vote #12, Roll Call Vote #13 United States House of Representatives, 118th Congress.

55 Roll Call Vote #14, United States House of Representatives, 118th.

56 Roll Call Vote #15, Roll Call Vote #16, United States House of Representatives, 118th Congress.

57 Roll Call Vote #17, United States House of Representatives, 118th.

58 Roll Call Vote #18, United States House of Representatives, 118th.

demanded, and the motion failed in a recorded vote.⁵⁹ Subsequently, a second ballot was taken, with two names in nomination, and Member-elect McCarthy was elected Speaker at 12:38 am.⁶⁰

3.1 The Structure of the Contest

Procedurally, the 118th Speaker election was the 5th longest in history, requiring a total of 15 ballots. While some commentators had expected marathon days with votes going long into—or perhaps even through—the night, the actual floor sessions were not lengthy. None of the four calendar days saw the House spend more than 6 h on the election, and no day saw more than five ballots taken. This is consistent with the historical deadlocks of 1849, 1855, 1859, and 1923, in which most days the House cast between 3 and 5 ballots for Speaker.

These short days might have surprised some commentators, but they reflect three core realities of the Speaker election. First, each ballot takes a significant amount of time. While they grew shorter on Friday, the nominations generally took 15–20 min, as Members-elect gave short nominating speeches that functioned as debate.⁶¹ Calling the roll of Members-elect for the *viva voce* vote took roughly 45–60 min. Finally, the compiling and certifying of the official vote count by the tellers and staff takes 20–30 min. Consequently, a complete ballot was taking roughly 80–95 min on average to complete.⁶²

To be blunt, this is boring for the Members-elect. In the contemporary House, Members are essentially *never* trapped on the House floor for this length of time. And while Members-elect were free to leave the floor and return to their offices, the 80–95 min windows basically made them unrealistic; it was enough time to make the sitting around annoying, but not enough time to leave without feeling like you had to turn right around and come back. Many Members-elect did leave the House floor for periods of time, but the atmosphere was quite obviously one of boredom and impatience. To continue this through the night may have resulted in a bipartisan mutiny to adjourn.

But perhaps more importantly, endless ballots are not productive. This was plainly true on Thursday, when the five ballots resulted in almost no movement of votes among the coalitions. And while political bargaining can certainly take

59 Roll Call Vote #19, United States House of Representatives, 118th.

60 Roll Call Vote #20, United States House of Representatives, 118th.

61 It is unclear under what time rule Members-elect have control of the floor during the nominations. It is plausibly the hour rule, but more likely just the sufferance of the House.

62 For example, on Thursday, the nominations for the five ballots began at 12:12 pm, 1:49 pm, 3:17 pm, 4:49 pm, and 6:16 pm, for an average of 91 min per cycle.

place on the floor and in the areas around the House chamber, it's more likely to be productive off-floor during an adjournment. The majority clearly recognized this on Wednesday and Friday, when they adjourned in the afternoon and returned for evening sessions.

Viva voce voting also creates an unusual strategic environment in the House. Recorded votes in the contemporary House are typically taken by electronic device, in which all Members may vote simultaneously, and may subsequently change their vote at any time while the vote is open. The *viva voce* voting used for the Speaker election employs an alphabetical call of the roll, to which Members-elect respond by voice. Consequently, Members-elect whose names are early in the alphabet can credibly signal their intent to defect and vote against their party nominee; Members-elect who are later in the alphabet cannot make such credible commitments.

3.2 Stable Voting Patterns

During those 15 ballots, a total of six different people were put into nomination⁶³ and a total of nine different people received at least one vote for Speaker. Figure 1 reports the candidates and vote totals by ballot.

The voting patterns over the 15 ballots reveal several important dynamics of the Speakership election. First, the voting was incredibly stable. All 212 Democrats supported Hakeem Jeffries on all 15 ballots. Of the 222 Republicans, 201 supported McCarthy on all 15 ballots.⁶⁴ Only 21 Republican Members-elect voted for a candidate other than McCarthy on *any* ballot (henceforth referred to as “dissenters”). Of those 21 dissenters, 19 voted against McCarthy on the first ballot and continued to do so until the 12th ballot.⁶⁵ In essence, there was virtually no movement in the vote during Tuesday, Wednesday, or Thursday.

This reflects the relatively straightforward structure of the Speakership politics. A small coalition of conservative Republican dissenters held the balance of power in the chamber and denied McCarthy's leadership coalition the votes necessary to be elected Speaker while they bargained with the presumptive leadership to win

⁶³ Formal nominations were made for Member-elect McCarthy, Member-elect Jeffries, Member-elect Jordan, Member-elect Biggs, Member-elect Donald, and Member-elect Hern. Votes were cast for each of these candidates, as well as for Member-elect Banks, former president Donald Trump, and former Member of Congress Lee Zeldin.

⁶⁴ McCarthy received a low of 200 votes on ballots 9–11 when Member-elect Buck (CO-4) did not vote, as he had returned to Colorado for a medical procedure.

⁶⁵ The other two were Member-elect Donalds (FL-19), who switched from McCarthy to the dissenter coalition on the third ballot, and Member-elect Victoria Spartz (IN-5), who switched from McCarthy to “present” on the fourth ballot.

Ballots Cast for Speaker, 118th Congress, By Candidate																
Candidate	Ballot #															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Jeffries	212	212	212	212	212	212	212	212	212	212	212	211	212	212	212	
McCarthy	203	203	202	201	201	201	201	200	200	200	200	213	214	216	216	
Total, Dissenters	19	19	20	20	20	20	20	20	20	20	20	7	6	4	0	
Donalds	1			20	20	20	19	17	17	13	12					
Jordan	6	19	20									4	6	2		
Biggs	10													2		
Zeldin	1															
Banks	1															
Tump							1	1			1					
Hern								2	3	7	7	3				
Present				1	1	1	1	1	1	1	1			2	6	
Not Voting	0	0	0	0	0	0	0	0	1	1	1	3	2	0	0	
Total Count	434	434	434	434	434	434	434	434	434	434	434	434	434	434	434	

Figure 1: Ballots cast for speaker by candidate.

concessions on procedural rules, party practices, and the policy agenda in the 118th Congress. The size of the dissenter faction was unknown at the outset—only five Republican Members-elect had declared prior to the first ballot their intention to not vote for McCarthy—but once revealed, it never gained any strength in the chamber, reaching its high of 21 dissenters on ballot four. Nor did it lose strength; the coalition held together until the presumptive leadership team provided a significant portion of the demanded concessions prior to the House coming to order on Friday.⁶⁶ That moved most of the dissenters into the leadership coalition, and the final margin was achieved after significant on-floor negotiating Friday evening.⁶⁷ In the final vote, McCarthy won the Speakership with 216 votes to 112 for Jeffries, with six dissenters voting “present” to provide the necessary margin.⁶⁸

3.3 The Political Context

In historical perspective, this makes the Speakership contest in the 63rd Congress (1923–1925) the most analogous. Coming out of the 1922 election, Republicans held a

⁶⁶ Anthony Adragna, Nicholas Wu, Kyle Cheney, and Olivia Beavers, “McCarthy on Brink of Speakership,” *Politico*, January 7, 2023.

⁶⁷ Annie Karni, “McCarthy wins Speakership on 15th Vote After Concessions to Hard Right,” *New York Times*, January 7, 2023.

⁶⁸ The dissenters who voted “present” in the final vote were Biggs, Boebert, Crane, Gaetz, Good, and Rosendale.

narrow majority in the House. A group of progressive Republicans was demanding rules changes and could not be mollified by the leadership prior to the Speakership election. Four ballots were held on the first day and four more on the second day, with little movement among the factions.

Prior to the third day of the contest, the leadership capitulated to the progressive faction on the rules changes, and the presumptive Speaker (Frederick Gillett, who had served as Speaker in the previous two Congresses), was elected. This leadership-dissenter dynamic stands in contrast to the Speakership contests that occurred prior to the Civil War, in which various candidates were tested by large factions looking for majorities assembled in cross-party coalitions, and in which multiple candidates came close to being elected Speaker.⁶⁹

In this view, the politics of the 118th Speakership contest were not unusual. It is routine, perhaps even banal, for the majority party in the House to adjudicate factional disputes over policy, procedure, and the distribution of power. That occurs prior to the start of every Congress, as the majority party elects its leaders, makes committee assignments, and adjusts the House rules. The explicit leadership-dissenter dynamic has played out in both parties in the past decade; while it was once quite rare for members to vote against their party's candidate for Speaker, since 2011 it has happened regularly in both parties.⁷⁰ In many cases, it has been individual Members-elect or factions of Members-elect signaling discontent with the leadership in protest votes; in other cases, such as with the Republicans in 2013, it reflects a failed effort to actually produce a second-ballot bargaining situation.

The unusual aspect in the 118th Congress was that the presumptive leadership was not able to mollify the factional demanders prior to the Speakership votes on the floor. Indeed, a similar dynamic had played out just four years earlier, when the Democrats regained the majority after the 2018 election. Presumptive Speaker Pelosi faced an organized faction of freshmen and returning Democrats, 16 of whom signed a public letter after the election in November 2018 stating they would not vote for her on the floor.⁷¹ By early December, Pelosi had won their support by bargaining with them and agreeing to several concessions, including supporting term limits for Democratic House leaders.⁷²

69 See Jenkins and Stewart, *Fighting for the Speakership*.

70 Since 2011, prior to the 2023 contest, there had been an average of 15 defections on the floor from party nominees. In the 14 previous Congresses, there were a total of 19 defections, and in eight of those elections there were no defections.

71 Lindsey McPherson, "16 Pelosi Opponents Sign Letter Saying They Won't Vote for her for Speaker," *Roll Call*, November 19, 2018.

72 Lindsey McPherson, "Pelosi Agrees to Deal Limiting Her Speakership to 4 Years," *Roll Call*, December 12, 2018.

The concessions ultimately made by McCarthy on procedure, power sharing, and policy were all under negotiation during the eight weeks between the 2022 election and the opening of the 118th Congress.⁷³ Why was he not able to secure the support of the dissenters prior to the Speakership vote? One possibility is that he was calling their bluff and did not believe they would actually vote against him in sufficient numbers to deny him election. A second is that at least some of the dissenters may have not been seeking procedural or policy adjustments, but actually hoping to actually deny McCarthy the Speakership and replace him with a different leader. A third is that the dissenters may have wanted the public stage of the Speakership vote for their own political purposes, gaining themselves media attention and a dramatic signal of distance from the mainstream Republicans and leadership.

3.4 Limited Procedural Maneuvering

Procedurally, the Speaker election was almost completely lacking in surprise; it unfolded in a very routine and predictable manner. There was virtually no procedural intrigue and no chaotic deliberative situations on the floor stemming from procedural strategy. After the routine business that began each legislative day, there were virtually no interruptions to the normal order of business for the election. The days consisted almost entirely of nominations and *viva voce* election votes. The only other votes were on adjournment, and the only other procedural actions were the points of order against a quorum made by Member-elect Stefanik at the outset of several legislative days. No Member-elect sought to alter the process by making a motion to change the rules or otherwise deviate from the order of business.

This can mostly be attributed to the straightforward political dynamic of the majority party bargaining with a dissenter faction and the associated stable floor coalition. Unlike past Speakership contests, where backbenchers from multiple parties were shifting their support among various candidates and taking votes on motions to alter rules of procedure for the election, the vast majority of Members-elect were passive observers of the 118th contest, marking time and taking votes while the Republican leadership engaged in off-floor bargaining with the dissenter faction.

One procedural strategy that was widely discussed by commentators but never came to pass was the possibility of McCarthy using Democratic votes to win election, or moderate Republicans forming a coalition with Democrats to elect their own Speaker. While cross-party coalitions of this sort have occasionally arisen in

⁷³ Lindsey McPherson, "McCarthy Backed for Speaker, but has Work to do Before January," *Roll Call*, November 15, 2022.

state legislatures with very narrow partisan divisions, it was never a serious possibility during the 118th Speakership contest. Republican Member-elect Don Bacon (NE-2) floated the idea that moderate Republicans might need to start talking to Democrats about a coalition if the logjam could not be broken, but this seemed more like a bargaining position against the dissenters, and never gained public support among moderate Republicans large enough to create a viable coalition.⁷⁴

Likewise, McCarthy using Democratic votes to achieve the Speakership would not have solved his coalition problem; the authority of the Speakership rests on continued support from a majority for procedural votes, and unless McCarthy planned on governing with that coalition for two years, using it to achieve a one-time majority for the election would have just meant taking the Speakership fight to the next vote, on the rules package. Even worse, any attempt at doing this would probably have cost McCarthy support among Republicans currently backing the leadership, potentially bringing down his candidacy. The only way for McCarthy to become Speaker was for Republicans to adjudicate their internal disputes.

Two procedural strategies, however, were on display during the week. The first was the use of the nomination process by the dissenters in an attempt to peel votes away from the Republican majority. On the first ballot, Member-elect Paul Gosar (AZ-9) nominated Andy Biggs (AZ-5), an outspoken critic of McCarthy and a leader of the dissenters who had already pledged to vote against McCarthy on the floor. After the strength of the dissenter vote was revealed on the first ballot—in which five different candidates were supported with dissenting Republican votes—the dissenters coordinated their votes on subsequent ballots, nominating and voting as a block for Jim Jordan (OH-4) on ballots two and three, and then for Byron Donalds (FL-19) beginning on ballot four. One further candidate, Kevin Hern (OK-1), was placed in nomination for the final three ballots on Thursday and the first ballot on Friday, perhaps reflecting another failed attempt by the dissenters to peel off fresh leadership votes.

Although it failed, the shifting dissenters' nominations on early ballots reflects sound political strategy. If they could peel off even a few McCarthy votes on any given ballot, it might start an avalanche that could give rise to a new candidate from the leadership coalition, creating chaos and potentially strengthening the dissenters' bargaining position. Or, their behavior might just concern the leadership enough that it would capitulate to the demands of the dissenters. The McCarthy forces, of course, knew this and were able to use the converse nominating strategy: keep nominating and voting for McCarthy as a solid block, to keep their coalition as solid as possible and deny the dissenters any floor momentum.

74 Moly Ashford, "Bacon would work with Dems to elect moderate house speaker if GOP's McCarthy falls short," *Omaha World Herald*, Jan 3, 2023.

The second observed procedural strategy was attempts by the Democrats and some dissenters to block adjournments. On Tuesday, the House adjourned after three ballots with a voice vote, and the yeas and nays were not demanded. On Wednesday, the motion to adjourn after four ballots had been taken was contested, with Democrats and some dissenters seeking to defeat the motion and continue the balloting. Strategically, this likely reflected a belief among Democrats that a prolonged floor session would encourage a resolution or at least cause more pain within the Republican Party, and a belief among some of the dissenters that a prolonged floor session favored their coalitions' endurance to hold together. The adjournment ultimately was adopted, 216-214.

3.5 Non-partisan Management of the Proceedings

Arguably, the most unusual aspect of any contested election for Speaker is the prominent role of the Clerk and non-partisan House staff in the proceedings. The Clerk, in particular, is faced with a very challenging political situation. Thrust into the role of presiding officer under rules and custom, the Clerk becomes responsible for managing a deliberative legislative body that not only did not elect her with this job in mind, but is also composed of not her peers, but of her bosses. Furthermore, no Clerk is likely to have significant experience presiding over the House beyond the low-stakes ceremonial role usually attached to the job at the beginning of a Congress.

While many people assume the job of presiding officer is either easy or inconsequential, it actually takes a fair amount of skill and experience to preside over the House effectively. A good presiding officer ensures that the deliberations of the chamber are conducted in a productive and efficient manner, that decorum is maintained in the chamber, and that the proceedings unfold in a manner that gives everyone a sense of equal and fair opportunity under the rules, and outcomes that reflect proper procedural decision-making rather than personality or intrigue. With an inexperienced presiding officer, there will often be inefficient deliberation. But if circumstances continue to degrade, it can lead to chaos on the floor, shouting mobs among the Members, and the poisoning of the deliberative atmosphere within the legislative body.

Clerk Cheryl Johnson did an admirable job presiding over the House during the election of the Speaker, and she and the entire non-partisan floor staff deserve the recognition the House gave them at the end of the election. Given her inexperience, she leaned heavily on the parliamentarians to guide her through the verbal scripts and procedural choices she had to make while in the chair.⁷⁵ On Tuesday, she did

⁷⁵ Much of this could actually be heard on the C-SPAN coverage. Prior to the adoption of rules and announcement of the Speaker's Orders for a new Congress, the usual rules governing the televised

very well to control the decorum of the House, several times early in the proceedings using her discretion to bang the gavel and demand order in the chamber, which set the tone for the proceedings and successfully asserted her authority at the presiding officer. She continued her strong decorum control of the House on Wednesday, several times demanding order in the face of a much more animated and unruly set of Members-elect than on Tuesday, with several incidents of name-calling on the floor.

The contested adjournment vote on Wednesday, however, was a low point for the management of the election and illustrates the difficult situation an inexperienced presiding officer can be faced with. When Member-elect Cole moved to adjourn on Wednesday evening, a voice vote was automatically triggered, the first contested voice vote of the election. After asking for the ayes and noes, the Clerk should have made a decision as to which side appeared to have the vote. There had been loud screams both in favor and opposed, but she needed to make a call. In reality, it didn't even matter which way she called it, because the yeas and nays were almost certainly going to be demanded and a recorded vote taken.

But instead, she froze for about 30 s. As heard on C-SPAN, the parliamentarian was repeatedly whispering to her "just call it as you hear it" but she didn't say anything. Perhaps she didn't know who won. Perhaps she didn't want to have to make the choice. But after she froze, the House—already riled up by the contested adjournment vote—became even more unruly. Several members audibly demanded the yeas and nays without even being recognized; others were shouting that their side had the vote. The general noise level shot up far beyond an acceptable level. These are the precise circumstances where a steady and firm presiding officer is needed, to bang the gavel and restore order to the proceedings.

The Clerk did recover, but made a procedural error, recognizing a member who demanded the yeas and nays, but without first declaring which side won the vote. Eventually, she simply said "the ayes have it, the yeas and nays are ordered," which was not procedurally elegant but got to the correct result and a recorded vote was conducted.

Unfortunately, things got worse at the end of the recorded vote. The adjournment vote was scheduled as a 15-min vote, which under House rules must last *at least*

coverage of the House are not yet in place. This allows C-SPAN to show camera angles that are not normally allowed under the rules, and also to turn up the microphones in order to listen in to floor discussions among Members. A close observer could hear the parliamentarian staff advising the Clerk on the rostrum, sentence by sentence, most of the time she was presiding. This in itself is not unusual; the parliamentarian staff often provides the same guidance for Members in the chair, especially if they are inexperienced. But the lack of coverage regulations allowed television viewers to observe it during the Speaker election.

15 min; it's not a shot clock, but a minimum, and most votes in the House are held open much longer than 15 min, often with a large number of Members voting after the initial 15-min period has expired. The Clerk, however, chose to close the vote shortly after the 15-min mark, which is her right and a very impartial way to go about presiding. There's nothing wrong with it procedurally. But it was a very close vote, and nine Members still had not voted. Even worse, when the 15-min time had first expired, the nays had the majority, and some Members-elect began yelling to close the vote. The Clerk did not close the vote until several moments later, when the Ayes had taken the majority. An atmosphere of chaos ensued.

In reality, none of this matters much procedurally. You can vote *very* late in the House, even as the vote is being announced, and several Members-elect came rushing to the well to do just that as the vote was being closed. In the end, the votes were all counted and the correct decision was made. But the clumsy handling of the entire vote episode caused disorder in the House, sowed doubt about the propriety of the proceedings, and created some bad feelings among the Members-elect, all of which could have been avoided with better handling by the presiding officer.

When the House was called to order on Thursday, the Clerk did something very wise. She made an announcement from the chair that she had a responsibility to preserve order; that Members-elect should always address the chair, not each other, with remarks; and asked for their cooperation in maintaining the order and decorum in the House. This was an excellent move by the Clerk, and set the tone for the remaining two days of the Speakership contest, which unfolded with less disorder than the Wednesday session, and no further incidents like the Wednesday adjournment vote.

4 Conclusion: The End of the Beginning

The Speakership contest at the outset of the 118th Congress was resolved relatively quickly. Unlike the extended deadlocks of the antebellum era, it will not significantly delay the beginning of the substantive work of the House.⁷⁶ Nor was the result an upheaval of the leadership; if someone *other* than McCarthy had ultimately been elected Speaker, the transition to a Republican majority in the House would have been much more chaotic in January. As previously discussed, the political structure

⁷⁶ There were some minor delays due to the contest. Obviously, the basic organization of the chamber was set back a week. More importantly, the Republican conference did not name its committee chairs in December, as is usual practice, in part because McCarthy and the leadership team had concerns such assignments might impact the Speakership vote. This delayed the staffing and organization of the committee system by several weeks.

of the contest reflected a drawn-out, but ultimately normal, politics of intra-party bargaining within the majority party, made difficult because of the slim 222-212 majority Republicans held in the chamber. The dissenters drove a hard bargain, and ultimately McCarthy relented and agreed to their demands for rules changes, increased power, and policy considerations.

That same narrow majority, however, guarantees that the contentious intra-party bargaining dynamic is likely to continue during the 118th Congress. Control of the House is always in the hands of the majority of Members, and a narrow partisan majority is only capable of effective governance in the House if it can unite its disparate factions. Having brought the dissenters into the coalition for the Speakership vote ultimately does little more than secure the Speakership. Going forward, the leadership will need to maintain that majority, week after week, both for procedural control of the chamber, and for substantive passage of the party agenda. Dissenters did not unilaterally disarm by agreeing to the Speakership bargain; they still wield the power to deny McCarthy a majority at any time.

This dynamic will create particular difficulty on issues of budgeting and appropriations. Many of the dissenters have historically been “no” votes on raising the debt limit and passing discretionary appropriations bills, even when Republicans had control of the chamber. Speaker McCarthy will necessarily need to bargain with the Senate and President Biden over these issues, and ultimately will be required to give his approval on compromise deals; that is the nature of legislative leadership in divided government. Whether McCarthy can effectively do that without losing the confidence of the dissenters and his working partisan majority in the House will be a key test of his political leadership in the 118th Congress.